IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1650 of 1984
With
CROSS OBJECTION No. 95 of 2007
In FIRST APPEAL No. 1650 of 1984

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HIRABHAI DHULABHAI & 1 - Appellant(s)
Versus
DEVYANI JAYRAJSINH M CHAUHAN & 7 - Respondent(s)

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Appearance :
MR AS ASTHAWADI for MR PRASHANT G DESAI for Appellant(s) : 1 - 2.
MR NV SOLANKI for Respondent(s) : 1 - 4.
MR SB VAKIL for Respondent(s) : 5 - 7.
Respondent : 8 DELETED ,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 30/10/2007

ORAL JUDGMENT

The appellants, the driver of the offending vehicle and the Surat Municipal Corporation

(hereinafter referred to as, **“the Corporation”**) have preferred the present Appeal under Section 110D of the Motor Vehicles Act, 1939 against the judgment and award dated 1st May, 1984 passed by the Motor Accident Claims Tribunal, Surat (hereinafter referred to as, **“the Tribunal”**) in Motor Accident Claim Petition No.328/1982. The respondents nos.1 to 4 are the claimants. The respondents nos.6 and 7 are the driver and the owner of the other vehicle involved in the accident. The respondents nos.5 and 8 are the insurance companies. The offending vehicle was insured by the respondent no.5 (hereinafter referred to as, **“the insurer”**).

The motor accident in question occurred on 8th June, 1982 on Nehru Bridge connecting Rander and Surat city. The accident involved three vehicles: two trucks bearing registration nos.GTT 4521 and GTB 5978 and a scooter. The victim Dr.Jayrajsinh Chauhan was riding the scooter. The truck bearing registration no.GTT 4521 (hereinafter referred to as, **“the offending vehicle”**) belonged to the Corporation. It so happened that on 8th June, 1982 at around 5:30 in

the afternoon the victim Dr.Jayrajsinh Chauhan, a resident of Rander was going to his clinic in Surat on the scooter. While passing over the Nehru Bridge he was crushed between two trucks bearing nos.GTB 5978 going ahead of the scooter and the offending vehicle following the scooter. In the process Dr.Jayrajsinh Chauhan received fatal injuries and died before be was taken to a hospital. The claimants: the widow, a minor child and the parents of the deceased filed Motor Accident Claim Petition No.328/1982 in the Tribunal for a compensation in the sum of Rs.10 lakhs. The Tribunal, by impugned judgment and award, held that the driver of the offending vehicle was solely responsible for the accident in question. The Tribunal awarded compensation in the sum of Rs.4,60,000=00 with interest at the rate of 6% per annum and the cost against the opponents nos.1,2 and 3, the appellants and the insurer. The liability of the insurer was restricted to Rs.50,000=00. Feeling aggrieved, the appellants have preferred the present Appeal and the claimants have filed the above Cross Objection.

Mr.Asthawadi has appeared for the appellants. He has submitted that the Tribunal has erred in holding that the offending vehicle was solely responsible for the accident in question. He has submitted that the accident in question occurred on account of rash and negligent driving by the deceased Dr.Jayrajsinh Chauhan. He has submitted that at the relevant time all the three vehicles were passing over the Nehru Bridge towards Surat city. There was a heavy traffic on the bridge. The offending vehicle could not have been driven at an excessive speed or in rash and negligent manner. The accident in question occurred on the right side of the road i.e. all the three vehicles were driven on the left of the road. The Tribunal has erred in not believing the statement of the appellant no.1, the driver of the offending vehicle. He has submitted that the appellant no.1 had deposed before the Court that it was the deceased who was driving the scooter at an excessive speed. He was attempting to overtake the offending vehicle. However, on account of the oncoming traffic he swerved to his left and came between the offending vehicle and the truck bearing no.GTB 5978. As the

truck no.GTB 5978 had suddenly applied the brakes, the deceased could not control his vehicle and dashed with the truck no.GTB 5978. He fell down the scooter and suffered fatal injuries. Mr.Asthawadi has submitted that thus it was the deceased who was negligent in driving the scooter. At the most some negligence can be attributed to the truck no.GTB 5978 but the offending vehicle was not the cause of the accident. He has submitted that the offending vehicle has wrongly been held responsible for the accident in question. In support of this submission, Mr.Asthawadi has relied upon the panchnama of the site of accident and the evidence of the appellant no.1, the driver of the offending vehicle.

Mr.Asthawadi has also challenged the amount of compensation awarded to the claimants. He has submitted that the Tribunal has erred in taking Rs.3,200=00 as datum figure and in adopting a multiplier of 15 years. He has submitted that considering the income of the deceased in the previous years, it was apparent that the figures given in the income-tax return filed after the death

of the deceased were inflated. Such figures could not have been considered by the Tribunal for computation of the datum figure. In support of his submissions, Mr.Asthawadi has relied upon the judgment in the matter of **Ritaben alias Vanitaben Wd/o Dipakbhai Hariram and another** [1998(2) GLH 670].

Mr.Solanki has appeared for the claimants. He has contested the Appeal and pressed the Cross Objection. He has supported the impugned judgment in so far as the offending vehicle has been held wholly responsible for the accident in question. He, however, has submitted that the Tribunal has erred in not computing the amount of compensation correctly. He has submitted that the deceased was a qualified doctor; he had a private practice at Surat; he had also learnt accue-pressure; he had started accue-pressure treatment for two years before this death and that he was earning well. Considering the increase in his income in the months before his death, the Tribunal has erred in assuming his income at Rs.4,500=00 per month and in deducting 1/3rd amount for his personal expenses. He has submitted that the

dependency loss should have been calculated at Rs.7,500=00 per month. Considering the age of the deceased, the Tribunal ought to have adopted a multiplier of 18 years. He has also submitted that the Tribunal ought to have awarded compensation in the sum of Rs.10 lakhs as claimed by the claimants. He has submitted that the compensation awarded by the Tribunal be enhanced to Rs.10 lakhs as prayed for by the claimants.

Mr.Solanki has relied upon the judgments in the matters of **Prabodh Chand Tyagi and another v/s. Delhi Transport Corporation and another** [2004 ACJ 1352]; of **Gujarat State Road Transport Corporation v/s. Patel Rajabhai Bavabhai and others** [2004 ACJ 495]; and of **Prerna (Smt) and another v/s. M.P.State Road Transport Corporation and others** [(1993)1 SCC 621].

As to the finding in connection with the rash and negligent driving, I am unable to defer with the Tribunal. The driver of the offending vehicle did depose that it was the deceased who was rash and

negligent. He met with the accident in the process of overtaking the offending vehicle. However, the said statement has not been supported by any other independent witness. On the contrary, one Ishwersinh Kalabhai had a different version. According to the said eye-witness, it was the offending vehicle which was being driven at an excessive speed. The scooter was driven ahead of the offending vehicle. The offending vehicle hit the scooter from behind. On account of the push suffered by the scooter, it went ahead and hit the truck bearing no.GTB 5978 going ahead of it. Considering the panchnama and the evidence of the eye-witness, I am of the opinion that the Tribunal has rightly held the offending vehicle solely responsible for the accident in question.

As to the dependency loss, it has come on the record that at the time of his death, the deceased was 31 years of age. His annual income in the previous years was little more than Rs.20,000=00. His annual income of Rs.23,638=00 in the year 1978-79 gradually increased to RS.28,564=00 in the year 1980-81. However, in the year he died the income-tax

return filed disclosed a sharp increase in his income i.e. the income of Rs.38,000=00 was returned for the period from 1st April, 1982 to 30th June, 1982, the date on which the deceased died. Undoubtedly, the deceased being a qualified doctor, he having acquired skill in accue-pressure, his earning would have increased in future. However, the sharp increase at the commencement of the Accounting Year 1981-82 raises doubt about its genuineness.

I am, therefore, of the view that the monthly estimated income of Rs.3,200=00 of the deceased calculated by the Tribunal is just and proper. Out of the said estimated income, the Tribunal has deducted a sum of Rs.700=00 (i.e. less than 1/4th of his income), the amount which the deceased would have expended on himself. Undoubtedly, the deceased would have spent some money for his own maintenance, daily commutation, etc. Hence, the dependency loss calculated by the Tribunal at Rs.2,500=00 per month is also just and proper. Nor does the multiplier of 15 years adopted by the Tribunal warrants interference. To this, the Tribunal has added a sum

of Rs.10,000=00 for the loss of expectancy of life and for expenses incurred on obsequial ceremony.

In view of the above discussion, I am of the opinion that the compensation awarded by the Tribunal is just and proper. The finding that it was the offending vehicle which was solely responsible for the accident in question and that the liability of the insurer was limited to Rs.50,000=00 are also correct.

For the aforesaid reasons, the Appeal and the Cross Objection are dismissed with cost.

(Ms. R.M.Doshit, J.)

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